

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Morgan Stanley Smith Barney LLC,
and Morgan Stanley Smith Barney
FA Notes Holdings LLC,

Civ. No. 17-1101 (PAM/TNL)

Plaintiffs,

v.

ORDER

Christopher Johnson,

Defendant.

This matter is before the Court on the Report and Recommendation (“R&R”) of the Court-Appointed Receiver, Defendant’s Objections to that R&R, and Plaintiffs’ Motion for Contempt and Renewed Motion to Foreclose. Defendant does not oppose the Motion to Foreclose, and that Motion is granted. For the following reasons, the Motion for Contempt is denied without prejudice and any action on the R&R is held in abeyance pending the outcome of Defendant’s appeal.

BACKGROUND

The full background of this matter is set forth in the Court’s September 27, 2019, Order appointing a receiver and entering a charging order pursuant to Minn. Stat. § 322C.0503. (Docket No. 75.) Defendant Chris Johnson has appealed that Order. He sought a stay pending appeal, but the Court declined to stay the appointment of a receiver, noting that Plaintiffs had waited more than a year to collect on their judgment against Johnson. (Docket No. 91 at 5.) The appeal remains pending and has yet to be set for oral argument.

Despite the Court’s admonitions, Johnson continues to avoid paying the debt he owes to Plaintiffs. The Receiver concluded that Johnson had used his own LLCs and the LLCs of family members as subterfuges, and specifically that the LLCs purposefully characterized payments to Johnson as other than “distributions” to avoid the payment of those funds to Plaintiffs, as the Charging Order required. While Johnson takes issue with the Receiver’s factual findings, he does not dispute that Plaintiffs have established that foreclosure of his interests in his LLCs is appropriate. The Court will therefore order the foreclosure Plaintiffs seek.

Plaintiffs also ask the Court to impose contempt sanctions against Johnson for the conduct outlined in the R&R. Johnson objected to the R&R and requested an evidentiary hearing on the R&R’s findings. Because Johnson has appealed the Court’s Order appointing the Receiver, however, it is not appropriate for the Court to determine the merits of the Receiver’s conclusions or to rule on the Motion for Contempt that is based on those conclusions until after the Eighth Circuit Court of Appeals rules on the pending appeal. The parties may renew their respective requests after that ruling issues.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiffs’ Motion for Contempt and Renewed Motion to Foreclose (Docket Nos. 105) is **GRANTED in part** and **DENIED without prejudice** in part;

2. Plaintiffs are entitled to and shall have the power to foreclose their judgment lien and sell the transferable interest that Defendant owns in Providence Development, LLC, and Providence Investments, LLC. Defendant's interest in Providence Development, LLC, and Providence Investments, LLC shall be sold at a foreclosure sale; and
3. The hearing set for May 28, 2019, is **CANCELLED**.

Dated: May 22, 2019

s/ Paul A. Magnuson

Paul A. Magnuson
United States District Court Judge